MT LEGISLATIVE HISTORY

Chapter 333 1983

Bill H _____ S 336 Original bill & hist. ___C

H. Committee on Fish + Game			S. Committee on Fish + Game		
Hearing Date(s)	3-8	___C	Hearing Date(s)	2-8	___C
	3-10	___C		2-15	___C
	_____	___C		2-19	___C
	_____	___C		_____	___C
Date Out	3-10	___C		2-19	___C
	Rpt 3-10			Rpt 2-19	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

48TH LEGISLATIVE SESSION

COMMITTEE ON FISH AND GAME

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 28	2/4/83								
SB 47	1/4/83	2/3/83	2/3/83	2/3/83					
SB 126	1/12/83	2/3/83 1/20/83	2/8/83			2/8/83			
SB 132	1/14/83	1/20/83	2/3/83			2/3/83			
SB 224	1/19/83	2/17/83	2/17/83	2/17/83					
SB 257	1/24/83	2/3/83	2/3/83	2/3/83					
SB 336	2/1/83	2/15/83 2/8/83	2/19/83			2/19/83			
SB 344	2/3/83	2/15/83	2/19/83		2/19/83				
SB 357	2/4/83	2/15/83	Tabled	2/15/83					
SB 383	2/9/83	2/15/83	2/15/83			2/15/83			
SB 387	2/9/83	2/15/83	2/15/83	2/15/83					
SB 448	2/16/83	2/19/83	2/19/83	2/19/83					

Use a separate sheet for Senate, House Bills, and Resolutions.

Senate BILL NO. 336

INTRODUCED BY Daniels

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AERIAL HUNTING LAWS; INCLUDING A PROHIBITION ON HARASSMENT OF LIVESTOCK; PROVIDING FOR INCREASED PENALTIES AND ~~FORFEITURE OF PERSONAL PROPERTY~~ FOR ILLEGAL HUNTING OF WILD ANIMALS; AMENDING SECTIONS 81-7-501 THROUGH, 81-7-503 AND, 81-7-505, and 81-7-511, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 81-7-501, MCA, is amended to read:

"81-7-501. Aerial hunting prohibited -- exceptions. (1) Except as provided in 81-7-505, no person except an employee of the state, its subdivisions, or the federal government, acting within the scope of his employment may engage in the aerial hunting of wild animals as defined in 81-7-101 without first obtaining a permit from the department of livestock. The permit must specify the species of wild animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) No person issued a permit as required by this section may engage in aerial hunting of wild animals in violation of the terms of his permit, the rules promulgated by the board of livestock, or the terms of this part."

Section 2. Section 81-7-502, MCA, is amended to read:

"81-7-502. Rulemaking authority. The department of livestock may adopt rules to effectuate the purposes of this part and to implement and conduct the aerial hunting permit system provided for by this part. Rules made under this part may include:

(1) limits on the number of permits issued for a specific geographic area;

(2) limits on the area, calculated from the normal storage location of the permittee's aircraft, in which a permittee is authorized to hunt;

(3) reasonable experience qualifications for pilots and aerial hunters;

(4) standards for issuance of permits to nonresidents under 81-7-503;

(5) standards for issuance of a permit based upon actual or potential livestock losses due to predation;

(6) reports required of permittees; and

(7) such other matters as are necessary to effectuate the purposes of this part and reduce loss to livestock and wildlife from predation."

Section 3. Section 81-7-503, MCA, is amended to read:

"81-7-503. Residency requirement. No person not having residence and domicile in Montana may be issued a permit provided for in 81-7-501 except when authorized by the board

 INTRODUCED BILL

of livestock. Permits issued to nonresidents may be used only:

(1) in Montana counties adjacent to the state line that the department of livestock has determined are inadequately serviced by resident permittees; or

(2) on real property in Montana owned by the nonresident permittee."

Section 3. Section 81-7-505, MCA, is amended to read:

"81-7-505. Resident landowners authorized to aerially hunt over their own lands without permit -- conditions. Any landowner having residence and domicile in Montana may engage in the aerial hunting of wild animals, as defined in 81-7-101, ~~within his own aircraft and~~ over his own land without a permit, provided he annually notifies the department in writing that he will be engaged in aerial hunting and gives an adequate description of the location of the land over which he will ~~aerial~~ aerially hunt. Such hunting must be in accordance with all rules of the department of livestock."

NEW SECTION. Section 5. Prohibition against harassing livestock. While engaged in flying an aircraft, no person, whether or not lawfully authorized to aerially hunt, may knowingly harass, injure, or attempt to injure any livestock except with the express permission of the owner of that livestock. ~~Flying near livestock at an altitude of less~~

~~than 500 feet establishes a rebuttable presumption of knowledge of livestock harassment.~~

NEW SECTION. Section 6. Forfeiture of personal property used in illegal aerial hunting or harassment of livestock. (1) Aircraft or other personal property used in the air or on the ground in support of aerial activity in violation of this part or 87-3-126 must be forfeited to and confiscated by the state, along with any carcasses or pelts taken in violation of this part. Whenever property is observed in such illegal use or if there is probable cause to believe that property was devoted wholly or in part to such use, the property must be seized and held by the enforcement officers specified in 81-7-512. Upon conviction in a proceeding in district court in the name of the state against the owner or user of the property, it must be sold at a sheriff's sale under Title 25, chapter 13, part 7.

(2) This section does not apply to personal property that has been stolen prior to the illegal use if the lawful owner is not in collusion with a party involved in the illegal use.

NEW SECTION. Section 7. Codification instruction. ~~Sections~~ Section 5 ~~and 6 are~~ is intended to be codified as an integral part of Title 81, chapter 7, part 5, and the provisions of Title 81, chapter 7, part 5, apply to ~~sections 5 and 6~~ section 5.

-End-

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

February 8, 1983

The meeting of the Fish and Game Committee was called to order by Chairman Ed B. Smith on February 8, 1983 at 1:05 P.M. in Room 402, State Capitol.

ROLL CALL: Roll was called with Senator Jacobson arriving late.

DISPOSITION OF SENATE BILL NO. 126: Senator Smith passed out to the committee amendments that were prepared by Andrea Merrill as requested by the committee. (Exhibit 1) He advised he was happy with these amendments and felt they would take care of the problem.

Senator Lee motioned that the amendments to the bill be accepted.

Senator Lane seconded the motion. The motion passed unanimously with committee members that were present. Senator Jacobson had not arrived at the meeting as yet.

Senator Severson moved the bill as amended. Senator Lee seconded the motion.

Senator Mohar thinks, after the conversation about the word "consideration", that a different approach should be taken. He suggested amending the existing law to say "consideration in excess of $100".

Senator Smith said we would have more problems if we removed the word consideration. He feels it would open the bill wide open.

Senator Mohar said the language opens it up anyway. This is another approach that would legitimatize what you would do on your ranch for friends but would make Mr. Harmon get a license.

Senator Smith said we tried to pursue that last session. He noted this will be discussed again in the House.

On a Roll Call Vote the Committee voted 5-1 that Senate Bill No. 126 Do Pass As Amended. The Roll Call Vote is attached.

CONSIDERATION OF SENATE BILL NO. 336: Senator Daniels, District #14, advised that he had some amendments to propose to the bill and that the title would have to be changed to reflect the changes. He went through the amendments listed in the attached

Exhibit 2. He told the committee that the amendments were worked on at the last minute and they can be revised if appropriate.

Dave Harmon asked the committee if on page 2, lines 9, 10 and 11, if this allows an aircraft stationed on one side of the state to fly to the other side of the state. Instead of flying from one side of the state to the other, he was wondering if they couldn't get somebody in the specific area to handle the problem.

Senator Smith said that would be addressed when we get down to questions and answers.

Dave Harmon supports this bill. He would like annual permits. Aerial hunters have a 3 year permit and he would like to see it reduced to a yearly permit. There is an enforcement problem. There are two regional enforcement officers and that is not enough. If we could get more help and allow the officers to confiscate the plane and furs as partial payment, that would stop the problem the landowners are having in his area. He would like to see a stiffer fine for anybody who is caught, something that has a bite to it.

Bob Howard, President of the Montana Trappers Association, said that this bill addresses the problem of illegal aerial hunters in eastern Montana and some in the west. This bill puts some teeth into the penalties with a $5,000 fine and conviction. It also puts it in line with the Federal law. He stated there are only two Federal law enforcement officers for the whole state. He feels this bill would help put more enforcement officers in the field to control the problem. In four years there hasn't been a single man brought to trial. Aircrafts have run sheep and cows through fences. Some of the hunters do not care what they shoot at.

Elaine Molnar, secretary of the Montana Trappers Association, read a letter to the committee from Paul L. VanCleve, which is attached as Exhibit 3. She also submitted written testimony from G. W. Marstaeller, attached as Exhibit 4, and her own written testimony, attached as Exhibit 5.

Janet Moore, Montana Trappers Association, has talked to people in the Eastern part of the state and there is bitterness there. The word is going around that they are going to take care of this matter themselves. They will get their guns and start shooting, which will create a national incident and will close down aerial hunting altogether. She said we need to get some teeth into this thing and hopes this bill will help.

Les Graham, Department of Livestock, supports this bill but does not agree with the comments made by the proponents with

regard to law enforcement people. If they are talking about putting additional federal people for enforcement, that is fine, but the State of Montana does not have the revenue nor the FTE's to accomplish what they are talking about. Our Department is not in the process of adding any more people for enforcement work. He submitted amendments to the committee (Exhibit 6) and advised that he had not previously seen Senator Daniels amendments. He clarified the reason for the three year license is to coordinate with the sign-up with BLM and other Federal lands. He feels Senator Daniels amendment on page 3, line 13, to insert "leased or borrowed" should be taken out. He would concur with the penalties of $5,000 minimum or $10,000 maximum. He feels that is an excellent idea. He feels this law is good. There have been a lot of incidents and taking them to court is difficult.

Bob Gilbert, representing the Montana Woolgrowers, stated the aerial hunting program is very important to the woolgrowers industry. They have seen other means of control for coyotes taken away and hope this bill will not result in the same thing. The aerial hunting has put sheep people back into business. They can live with this bill and recognize the problems with law violators. They would be in accord with the stiffer penalty and have no problem with that. They are opposed to the one year permit and feel it is bad enough getting people signed up for the 3 year permits with BLM and the Forest Service. They are not an opponent to this bill but want to continue to have an effective aerial hunting program.

Chase Hibbard is a proponent to this bill, specifically as Less Graham has outlined with his amendments. He supports the comments made by Bob Gilbert on aerial hunting in general. Aerial hunting is the best tool we have to control coyotes. He stated this bill is not doing anything harmful to aerial hunting but the more workable form of the bill is the amendments suggested by Les Graham.

Representative Ryan, District #49, stated that Fergus County and Garfield County are both sheep producing counties and they use airplanes and a helicopter for aerial hunting. He said his county is the second highest sheep producing county in the state and they need the airplane program to control the coyotes.

Darrel Hanson is strictly in the cattle business and has give aerial hunters permission to hunt over his land. They have had no problems with them. They kill from 200 to 300 coyotes a year.

Senator Smith read a letter from Gerry Devlin, House District #52, in support of SB 336 if the proposed amendments are accepted. (Exhibit 7)

There were no opponents. Chairman Smith asked for questions from the committee.

Senator Smith asked Les Graham if they ran into problems with aerial hunting if you lease a section of private land.

Mr. Graham said federal and state law considers leased land as being in control by the lessee. It would be considered as the lessee's own property. That is consistent department wide.

Senator Lee asked Senator Daniels on page 4, lines 9-13, "Whenever property is observed in such illegal use or if there is probable cause to believe that property was devoted wholly or in part to such use, the property must be seized and held by the enforcement officers specified in 81-7-512", if that was a proper technique.

Senator Daniels referred to section 81-7-512, "Investigations of violations of this part, arrests and seizures may be made by any peace officer, or agent of the department designated by the department" and stated that this bill does contain clauses that are already in the general law. He left a copy of the present law with the committee along with a copy of the Administrative Rules of Montana on aerial hunting. Copies are attached as Exhibits 8 and 9 respectively.

Senator Mohar feels Section 5 will cause problems. Someone could accuse somebody of harassing their animals and promulgate an investigation, which could result in the seizure of their plane while investigating.

Mr. Graham said on page 3, line 23 the word "knowingly" is a key word and on page 4, line 10 the words "if there is probable cause" are important. These facts have to be established before you can go very far with anything.

Senator Mohar told Mr. Howard that he understood there is an adversary relationship between the Trappers Association and aerial hunters. Are they trying to pin down a group of bad aerial hunters or eliminate some of the competition.

Mr. Howard said there is always competition and they do not have qualms against the legal aerial hunter. Their primary concern is to protect the sheep flocks and get some control of the illegal hunters.

Senator Mohar asked Mr. Howard the value of a helicopter.

Mr. Howard named a certain type of helicopter and priced it at approximately $250,000.

Senator Mohar asked if he thought that was fair retribution.

Mr. Howard said that is the same as the federal law. He said it is very hard to catch these people and that is why is is feasible to have such a high penalty.

Senator Mohar said then it is already on the federal statute. He asked why, if we have a federal statute, do we have to have a state statute.

Senator Daniels said there are all kinds of state laws identical to the federal laws.

Senator Mohar asked Senator Daniels if he thought the fines from $500 to $5,000 were standard.

Senator Daniels said to be perfectly honest the amendment came up an hour before the hearing and in an attempt to get it before the committee he just put it from $500 to $5,000. The committee can change that. The federal fine is $5,000.

Mr. Howard thinks it should be comparable to the federal law.

Senator Mohar asked if somebody would look into this word "knowingly."

Mr. Graham said all through the criminal codes "knowingly", "probable cause" and "beyond a reasonable doubt" are used. He stated the $5,000 maximum is fairly close with the present criminal code of a misdemeanor violation.

ADJOURNMENT: There being no further business the meeting adjourned at 2:10 P.M.

Ed B. Smith

ED B. SMITH, Chairman

Submitted by Senator Daniels
February 8, 1983

Amendments to Senate Bill 336

1. Page 1, line 21
Strike: "."
Insert: take place "and will be valid for one year."

2. Page 2, line 3
Insert: livestock "together with the Department of Fish, Wildlife and Parks"

3. Page 2, lines 12-21
Strike: subsections 3 through 7 of Section 2; lines 12-21.

4. Page 3, line 13
Insert: aircraft ", leased or borrowed," and

5. Page 3, line 25
Strike: "Flying near livestock at an altitude of less"

6. Page 4, lines 1 & 2
Strike: lines 1 and 2: "than 500 feet establishes a rebuttable presumption of knowledge of livestock harassment."

7. Page 4, following line 20
Insert: "(3) In addition to the forgoing, any person or persons violating this act are subject to a fine of not less than $500 nor more than $5,000, or imprisonment in the county jail for not more than 6 months."

Exhibit 6
Submitted by Les Graham
February 8, 1983

AMENDMENTS
Senate Bill 336
Introduced Copy

Page 2

line 5 - strike: "Rules made under this"
strike line 6 thru 21 in their entirety

Page 3 - line 13

strike: "within his own aircraft and"

Page 3 - line 25

strike: "Flying near livestock at an altitude of less"

Page 4 - line 1 and 2

strike in their entirety

Exhibit 7
Submitted by Gerry Devlin
February 8, 1983

Mr. Chairman and Members of the Senate Fish and Game Committee:

I am Gerry Devlin, House District #52, and I support S.B. 336 if the proposed amendments are accepted. Dept. of Livestock

I operate a sheep and cattle ranch in northwest Prairie County. I am a permit pilot and hunt coyotes on my ranch, as well as some perimeter ranches. I hunt them year around for the protection of my livestock.

I feel that the Department of Livestock, through the permit system, has done an excellent job in administering this program. If the Department is forced to accept this bill in its original form, they will be put in the position of field enforcement which would be a duplication, because the Federal Aeronautics Administration already has that enforcement responsibility.

I am sure that there are individuals who violate their permits or hunt without them, but should we penalize all the honest aerial hunters because of a few irresponsible ones?

I urge this committee to accept the amendments so I can continue to protect my livestock from predators.

Thank you,

Gerry Devlin

GERRY DEVLIN

Exhibit 5, Senator Daniels, February 8, 1983

livestock of which he is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. Sec. 1, Ch. 110, L. 1903; re-en. Sec. 8861, Rev. C. 1907; re-en. Sec. 11552, R.C.M. 1921; re-en. Sec. 11552, R.C.M. 1935; Sec. 94-3567, R.C.M. 1947; redes. 46-3001 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 12, L. 1977; R.C.M. 1947, 46-3001.

Part 5

Aerial Hunting of Predatory Animals

81-7-501. Aerial hunting prohibited — exceptions. (1) Except as provided in 81-7-505, no person except an employee of the state, its subdivisions, or the federal government, acting within the scope of his employment may engage in the aerial hunting of wild animals as defined in 81-7-101 without first obtaining a permit from the department of livestock.

(2) No person issued a permit as required by this section may engage in aerial hunting of wild animals in violation of the terms of his permit, the rules promulgated by the board of livestock, or the terms of this part.

History: En. Sec. 1, Ch. 704, L. 1979.

Compiler's Comments

Codification. Sec. 8, Ch. 704, L. 1979, provided: "Sections 1 through 7 in this act are intended to be codified as an integral part of Title 81, chapter 7, and the provisions contained in Title 81, chapter 7, apply to these sections." Sections 1 through 7 are now 81-7-501, 81-7-502, 81-7-504, 81-7-503, 81-7-505, 81-7-511, and 81-7-512, respectively.

81-7-502. Rulemaking authority. The department of livestock may adopt rules to effectuate the purposes of this part and to implement and conduct the aerial hunting permit system provided for by this part.

History: En. Sec. 2, Ch. 704, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 497 (Ch. 704, L. 1979) provided: "Section 4 of this bill requires the Department of Livestock to adopt rules regulating aerial hunting. It is the intent of this bill that any rules so adopted not interfere with the needs of livestock producers protecting their livestock from predation. At the same time it is the intent of this bill that such rules protect the interests of persons who do not wish aerial hunting to occur over land in their control. Finally, such rules shall reflect the purpose that aerial hunting is permitted for the purpose of reducing livestock losses due to predation." The reference in this statement of intent to section 4 is apparently in error. Section 2 is apparently the correct reference, since it provides for rulemaking authority.

81-7-503. Residency requirement. No person not having residence and domicile in Montana may be issued a permit provided for in 81-7-501 except when authorized by the board of livestock.

History: En. Sec. 4, Ch. 704, L. 1979.

81-7-504. Duration of permit — fee. Each permit shall be valid for a period set by the department of livestock not to exceed 3 years and shall cost $50 or portion thereof if a period of less than a year is set. All fees for permits shall be paid to the department of livestock for deposit in the state treasury to the credit of the earmarked revenue fund for predatory animal control.

History: En. Sec. 3, Ch. 704, L. 1979.

81-7-505. Resident landowners authorized to aerially hunt over their own lands without permit — conditions. Any landowner having residence and domicile in Montana may engage in the aerial hunting of wild animals, as defined in 81-7-101, over his own land without a permit, provided he annually notifies the department in writing that he will be engaged in aerial hunting and gives an adequate description of the location of the land over which he will aerial hunt. Such hunting must be in accordance with all rules of the department of livestock.

History: En. Sec. 5, Ch. 704, L. 1979.

81-7-506 through 81-7-510 reserved.

81-7-511. Penalties — jurisdiction — revocation of permit. (1) Any person violating any provision of this part who is permitted to engage in aerial hunting pursuant to this part is guilty of a misdemeanor.

(2) A conviction for a violation of subsection (1) is punishable by a fine of not more than $500.

(3) Any person who is not permitted to engage in aerial hunting pursuant to this part who violates any provisions of this part is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $250 or more than $1,000. A subsequent conviction under this subsection is punishable by a fine of not less than $500 or more than $1,000.

(4) The justice court has jurisdiction over violations of this part.

(5) The department may revoke or suspend the permit of anyone violating its terms.

History: En. Sec. 6, Ch. 704, L. 1979.

81-7-512. Enforcement. (1) Investigations of violations of this part, arrests, and seizures may be made by any peace officer, or agent of the department designated by the department.

(2) To enforce this part, the department may enter into agreement with federal agencies with predatory animal control. Such agreements may allow the federal agency to assist in investigations, arrests, and seizures.

History: En. Sec. 7, Ch. 704, L. 1979.

CHAPTER 8

MARKETING

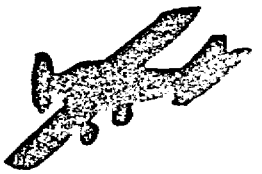
Part 1 — Livestock Markets
(Sections 81-8-101 through 81-8-133 repealed. Sec. 37, Ch. 566, L. 1979)

Part 2 — Livestock Markets, Dealers, and Brokers

Section
81-8-201 through 81-8-210. Repealed. Sec. 37, Ch. 566, L. 1979.
81-8-211. Short title.
81-8-212. Purpose.
81-8-213. Definitions.
81-8-214. Regulation of certain nonmarket sales.
81-8-215. Quarantine of diseased animals.

ORIGINAL

PILOT APPLICATION FOR AN AERIAL HUNTING PERMIT



STATE OF MONTANA
DEPARTMENT OF LIVESTOCK
BRANDS-ENFORCEMENT DIVISION
HELENA, MT 59620

This application will not be processed until it is completed, signed, and returned with necessary fee to the Montana Department of Livestock, Brands-Enforcement Division, Capitol Post Office, Helena. Make checks payable to the Department of Livestock.

The undersigned hereby makes application for an AERIAL HUNTING PERMIT to hunt coyotes and/or foxes from aircraft for the sole purpose of aiding in the protection of livestock from predation in Montana.

Full Name of Applicant (Pilot) _____

Mailing Address _____ City _____ State _____ Zip _____

Telephone Number _____

Check the Predator(s) requested to be hunted: ☐ coyotes ☐ foxes Fee Amount Enclosed $_____

PILOT CERTIFICATE DATA:

Certificate Number _____

Type of Certificate _____

Type of Ratings _____

MEDICAL CERTIFICATE:

Date of Most Recent Flight Medical Exam _____

Given by _____

Limitations _____

AIRCRAFT & PILOT DATA:

Aircraft Make _____ Registration No. _____

Model & Horsepower _____ Registered Owner _____

Date of Last Annual Inspection _____

Montana Pilot's Registration No. _____ Montana Aircraft Registration No. _____

Total Pilot Time _____ Total Time in Type _____

Has your pilot's license ever been suspended or revoked ☐ Yes ☐

If yes, why? _____

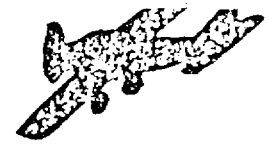
The undersigned hereby certifies that the foregoing information is true and correct; that he has read the statutes of Montana and the United States, and read the Department of Livestock rules governing aerial hunting and agrees to abide by them; and the owner, lessee or administrator of the lands for which aerial hunting is requested has given written permission for applicant to conduct aerial hunting on said lands.

Date _____ _____
Signature of Applicant Pilot

PILOT APPLICATION FOR AN AERIAL HUNTING PERMIT

STATE OF MONTANA
DEPARTMENT OF LIVESTOCK
BRANDS-ENFORCEMENT DIVISION
HELENA, MT 59620

This application will not be processed until it is completed, signed, and returned with necessary fee to the Montana Department of Livestock, Brands-Enforcement Division, Capitol Post Office, Helena. Make checks payable to the Department of Livestock.



The undersigned hereby makes application for an AERIAL HUNTING PERMIT to hunt coyotes and/or foxes from aircraft for the sole purpose of aiding in the protection of livestock from predation in Montana.

Full Name of Applicant _____

Mailing Address _____ City _____ State _____ Zip_____

Telephone Number _____

Check the Predator(s) requested to be hunted: ☐ coyotes ☐ foxes Fee Amount Enclosed $_____

AIRCRAFT DATA

Full Pictures of left & right side must be enclosed

F.A.A. Registration Number	Registered Owner & Address
_____	_____
_____	_____
_____	_____
_____	_____

Aircraft Make & HP	MT Aircraft Reg. No.	Color & Markings
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The undersigned hereby certifies that the foregoing information is true and correct; that he has read the statutes of Montana and the United States, and read the Dept. of Livestock rules governing aerial hunting & agrees to abide by them; and the owner, lessee or administrator of the lands for which aerial hunting is requested has given written permission for applicant to conduct aerial hunting on said lands.

D_____ Signature of Applicant _____

Exhibit 9, Submitted by Senator Daniels, February 8, 1983

Sub-Chapter 1

Aerial Hunting

32.22.101 PURPOSE AND SCOPE (1) This sub-chapter implements the provisions of Chapter 704, Laws of Montana 1979, which provides for a permit system for the aerial hunting of predatory animals. Under legislative directive these rules are not to interfere with the needs of livestock producers protecting their livestock from predation, but are to assist in the prevention and/or reduction of livestock loss from predatory animals. They are also to protect landowners, administrators or leasees who do not wish aerial hunting to occur over land under their ownership, management or control. This sub-chapter provides a system for the issuance of aerial hunting permits to protect livestock from predatory animals, and establishes the duties of permittees. (History: Sec. 81-7-502 MCA; IMP, Sec. 81-7-502 MCA; NEW, Eff. 1/2/77; AMD, 1979 MAR p. 1240, Eff. 10/12/79.)

32.22.102 ISSUANCE OF PERMITS (1) A person or organization desiring an aerial hunting permit shall apply for the permit by completing application and aerial hunting request forms provided by the department of livestock. Application and aerial hunting request forms are available upon request from the vertebrate pest control bureau, department of livestock, capitol station, Helena, MT. 59601.

(2) Permits will be issued only to persons currently licensed as pilots by the federal aviation administration, who have a private pilot's license as a minimum rating. An applicant must have at least 200 total flying hours. Applicants and their aircraft must also meet federal aviation administration and Montana aeronautics division, department of community affairs requirements for aircraft and pilots.

(3) Permits will be issued only to individuals or organizations resident and domiciled in Montana. The board of livestock, may authorize non-resident permits when adequate service cannot be provided by Montana permittees.

(4) The department may refuse the issuance of a permit, or revoke an already issued permit, if information contained in the application for a permit is found to be false.

(5) Individuals not employed by the fish and wildlife service, U.S. department of interior who engage in aerial hunting for the fish and wildlife service on a contract basis do not require a permit under these rules for those portions of the aerial hunting performed under contract with the fish and wildlife service. Any person under contract with the fish and wildlife service who engages in aerial hunting in addition to that performed under contract with the fish & wildlife service must comply with these rules for

those portions of the aerial hunting not performed under contract. (History: Sec. 81-7-502 MCA; IMP, Secs. 81-7-502, 81-7-504 MCA; NEW, Eff. 1/2/77; AMD, 1979 MAR p. 1240, Eff. 10/12/79.)

32.22.103 DURATION OF PERMITS-FEE (1) Permits will be valid for a period to be determined by the department not to exceed 3 years.

(2) Fees for permits will be:

(a) $30.00 for a permit issued for less than 1 year.

(b) $40.00 for a permit issued for 1 year to 2 years.

(c) $50.00 for a permit issued for 2 years to 3 years. (History: Sec. 81-7-502 MCA; IMP, Sec. 81-7-503 MCA; NEW, 1979 MAR p. 1240, Eff. 10/12/79.)

32.22.104 RESTRICTIONS UPON USE OF PERMIT (1) A permittee may engage in aerial hunting only over areas specifically approved for him to hunt by the department of livestock. Such approval will be given only upon a showing that livestock depredation has occurred or is likely to occur in the area to be approved, or in an area adjacent thereto, and that the land owner administrator, lessee, or their agent has given written approval for the aerial hunting to take place.

(2) Only coyotes and/or foxes may be hunted as set forth in the permit. The hunting or harassment of any other animal will result in revocation of the permit. Aerial hunting of coyotes and/or foxes may occur only for the protection of livestock, domestic animals or human life. For extraordinary reasons, the permit may be modified to allow the aerial hunting of other predatory animals not protected by federal law.

(3) No permittee may engage in aerial hunting who is not in full compliance with all applicable rules and regulations governing pilots and aircraft issued by the federal aviation administration or the Montana aeronautics division, department of community affairs.

(4) A permittee may not use an aircraft in aerial hunting until the department has been notified of that use and has received adequate identifying information about the aircraft. (History: Sec. 81-7-502 MCA; IMP, Sec. 81-7-502 MCA; NEW, Eff. 1/2/77; AMD, 1979 MAR p. 1240, Eff. 10/12/79.)

32.22.105 REPORTING REQUIREMENTS (1) All permittees shall file semi-annual reports with the vertebrate pest control bureau of the department of livestock on forms supplied by the bureau. The reports are due no more than 30 days after the end of each half year. For purposes of these reports half years shall end on June 30 and December 31 of

each year.

(2) The department may require such other information or reports of permittees as it may from time to time need. (History: Sec. 81-7-502 MCA; IMP, Sec. 81-7-502 MCA; NEW, Eff. 1/2/77; AMD, 1979 MAR p. 1240, Eff. 10/12/79.)

32.22.106 REVOCATION, SUSPENSION, OR MODIFICATION OF PERMIT (1) Failure to comply with these rules or statutes governing aerial hunting will result in the suspension or revocation of the permit.

(2) Upon the written refusal of the landowner, administrator or lessee, or their agent to allow further aerial hunting, sent to the department of livestock, the department shall close such areas to aerial hunting and modify any permits issued for such areas accordingly.

(3) Landowners, administrators or lessees may also direct the department to modify certain permits while allowing other permits to remain in effect over land under their control. (History: Sec. 81-7-502 MCA; IMP, Secs. 81-7-502, 81-7-511 MCA; NEW, Eff. 1/2/77; AMD, 1979 MAR p. 1240, Eff. 10/12/79.)

Senator Lee agrees with the bill but thinks we should strike the age limit completely. Although, for this session, he is afraid that might be going too far.

Senator Jacobson's motion passed unanimously with the members that were present.

Senator Lane asked how much this is going to cost the Fish and Game Department to enforce this.

Senator Jacobson feels the cost would be minimal due to the number of people that this will affect.

Senator Severson made a motion that SB 333 do pass as amended. A Roll Call Vote was taken. The motion passed unanimously with the members present. A copy of the Roll Call Vote is attached.

CONSIDERATION OF SENATE BILL NO. 336: Senator Lee made a motion that SB 336 do not pass.

Senator Smith said we have requested amendments to the bill and they have been prepared. He would suggest that we go through the amendments, act on the amendments and then decide what to do with the bill. He asked Andrea Merrill, Staff Researcher, to go through the amendments and explain them to the committee.

Andrea Merrill said the amendments that she prepared and handed out to the committee were a meshing of the two sets of amendments that were passed out at the hearing by the Trappers Assn. and Les Graham. A copy of the amendments is attached as Exhibit 6. She went through the amendments and explained them to the committee.

Some of the committee members questioned the fine of up to $1500, plus the ability to seize the plane and sell it at a sheriff's auction.

Senator Lee made a motion to adopt the amendments. The motion passed unanimously with the members present.

Senator Lee feels we should strike the new section 6 from the bill. He made a motion that on page 4, line 3, strike all of that section.

Senator Smith said the testimony was that because of some of the illegal action this section might be necessary.

Les Graham said there is some concern about that from the enforcement standpoint. The enforcement officers would be concerned with the language.

Senator Lee's motion passed unanimously with the members present.

Senator Smith said we would wait to take action on this bill until the full committee is present.

CONSIDERATION OF SENATE BILL NO. 344: Senator Severson said if this is a revenue bill it does not have to be out of committee by the 45th day.

Senator Smith said there is more to the bill than just an appropriation bill. This also is changing the license structure.

Senator Lee said he has some problems with this bill and he would just as soon wait until he has more time to look at it.

Senator Smith said the House has already acted on the fee increase and it might be a good idea to see what kind of increases were made and act on this bill when we have that information.

REQUEST FOR A COMMITTEE BILL: Senator Smith said there is a request for a committee bill with regard to taking more cow elk with a special permit.

Mons Teigen, Montana Stockgrowers Assn., met with the Fish and Game as they are concerned over the harvest of enough cow elk in areas where there is a real problem. They would like a special cow tag that would help the situation. A new Class 5 elk tag, sold for $8.00, which would allow only a cow elk to be harvested. There is a possibility this could be put in HB 335 as a new section, which would also require a change in the title. It was also suggested this could be introduced as a committee bill from this committee.

Chase Hibbard said he discussed this at a meeting last week and it is the general feeling of landowners affected by elk that there has not been an adequate cow harvest for the number of permits issued. This proposed legislation would address that issue whereby a hunter of a cow license would have to shoot a cow and not a bull. The Department now has tools available to be used to control the elk population. One is the special elk tag which you can draw during the regular season. This legislation would allow them to give a special cow license to only kill a cow. This will increase the number of cows killed by the hunters. According to the 1981 statistics from the Department of Fish, Wildlife and Parks on cow elk permits, 88% hunted, 12% did not hunt, and of those 88% that did hunt 40% killed an elk. Of those 40%, 80% killed a cow elk and

Exhibit 6
February 15, 1983

Amendments to SB 336

1. Title, line 8.
Following: "81-7-501"
Strike: "THROUGH"
Insert: ","
Following: "81-7-503"
Insert: ","

2. Page 2, line 1.
Strike: Section 2 in its entirety
Renumber: subsequent sections

3. Page 3, line 13.
Following: "81-7-101,"
Strike: "within his own aircraft and"

4. Page 3.
Following: line 19
Insert: "Section 5. Section 81-7-511, MCA, is amended to read:

"81-7-511. Penalties - jurisdiction - revocation of permit. (1) Any person violating any provision of this part who is permitted to engage in aerial hunting pursuant to this part is guilty of a misdemeanor.

(2) A conviction for a violation of subsection (1) is punishable by a fine of not ~~more~~ less than $500.

(3) Any person who is not permitted to engage in aerial hunting pursuant to this part who violates any provisions of this part is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $250 or more than ~~$1,000~~ $1,500. A subsequent conviction under this subsection is punishable by a fine of not less than $500 or more than ~~$1,000~~ $1,500.

(4) The justice court has jurisdiction over violations of this part.

(5) The department may revoke or suspend the permit of anycne violating its terms."
Renumber subsequent sections.

5. Page 3, line 25 through line 2 on page 4.
Following: "livestock."
Strike: remainder of line 25 through line 2, page 4

Thomas L. Kemph, Billings, furnished the committee with a copy of a letter from Ward Swanser, a member of the game farm task force. A copy is attached as Exhibit 3. Mr. Kemph said in 1977 he made application for a game farm and $26,000 and 19 months later he got his permit. If we can alleviate some of the problems he had with this bill he feels it will be justified. Ward Swanser could not be at the hearing today but he explained his problems with the bill, as drafted, in his letter. He requested the committee members and Mr. Flynn and Mr. Kelly to review the comments made in Mr. Swanser's letter.

Mr. Kelly said in looking over Mr. Swanser's letter it looks like we have addressed all of the points mentioned at our meeting this morning.

Senator Smith said when the House Fish and Game has their hearing on this bill there will be more time to plan and address the problems in the bill. He told Mr. Flynn and Mr. Kelly to go ahead and get the amendments prepared for the bill with the understanding that we are letting this bill go over to the House but that the Senate Fish and Game Committee will again review the bill.

Mr. Flynn said they will prepare the amendments and review them with the task force members. He suggested, at the time of the House hearing on this bill, that the House and Senate Fish and Game Committees have a joint hearing.

Les Graham said that the Board of Livestock members will support this bill only if it is amended back to the form originally intended.

DISPOSITION OF SENATE BILL NO. 448: Senator Mohar made a motion that SB 448 do pass with the consideration that there will be amendments and this committee will meet in joint session with the House Fish and Game Committee on the hearing date of this bill. The motion passed unanimously with the members present -- Senators Lane, Tveit, Mohar and Smith.

Senator Mohar made a motion that the committee adopt the Statement of Intent to the bill. The motion carried unanimously with the members present.

DISPOSITION OF SENATE BILL NO. 336: Andrea Merrill furnished the committee members with a copy of the amendments requested by the committee at our last meeting. A copy is attached as Exhibit 4.

Senator Smith told the committee that the amendments have been addressed and were already thoroughly discussed.

Senator Mohar made a motion that we adopt the amendments. The motion passed unanimously with the members present. Senator Jacobson had just previously returned to the meeting and voted

in favor of the motion.

Senator Lane made a motion that SB 336 Do Pass As Amended. The motion carried unanimously with the members present.

DISPOSITION OF SENATE BILL NO. 344: Senator Smith is concerned there will be confusion with splitting the license. He noted we did have a duck stamp in 1977-78 and it fell flat on its face.

Senator Jacobson made a motion that SB 344 do pass.

Senator Tveit made a substitute motion that SB 344 do not pass.

Senator Mohar said he likes the idea that the state can do very little and raise some revenue.

Senator Lane said people will be paying more money for the license.

Senator Mohar said his understanding is that they will be paying the same amount of money for the license. The revenue money generated will be from the sale of the artwork.

Senator Jacobson said also selling stamps to people collecting them.

Senator Smith does not believe it will be any different than the duck stamp in 77-78.

The vote was taken on Senator Tveit's substitute motion. The motion passed with a vote of 3-2. Senators Mohar and Jacobson voted against the motion.

ADJOURNMENT: The meeting adjourned at 2:30 P.M.

Ed B. Smith

ED B. SMITH

February 19, 1983

LAW OFFICES

MOULTON, BELLINGHAM, LONGO & MATHER, P. C.

SECURITIES BUILDING

BILLINGS, MONTANA 59103

February 18, 1983

WM. H. BELLINGHAM
BERNARD E. LONGO
W. S. MATHER
WARD SWANSER
L. W. PETERSEN
BRENT R. CROMLEY
GERALD B. MURPHY
RANDY H. BELLINGHAM
ROBERT H. PRIGGE
SIDNEY R. THOMAS
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FREDRIC D. MOULTON
OF COUNSEL

Mr. Keith Kelly
State o Montana
Department of Agriculture
Agriculture/Livestock Building
Capitol Station
Helena, Montana 59620

Dear Keith:

On Wednesday, February 16, 1983, I received the proposed legislation. Needless to say, I was quite shocked by it and found that it violated the intent of the proposed legislation submitted by the task force and which was agreed to in November, 1982, and which was submitted to us with your letter of January 10, 1983.

At this time I will attempt to point out the discrepancies in the bill and my objections to the changes gratutiously made by draftsmen.

1. Section 1, Para. 4 (page 2) Game Farm Shooting License. Rather than being a license as referred to under Sections 1 through 21, it should read "means the license a gam farm operator must have to hunt" etc.

2. Section 4,(2) (Page 3) line 14. This was redrafted and changed the intent that the department "shall issue a license" to "may issue a license". This is totally and completely unacceptable. We do not want the department to have the discretion to decide when they will or will not issue a license. We are talking about the private property right that every individual has to raise livestock as long as he complies with the other provisions of the Act as was discussed in the task force.

3

3. Section 4. Line 16. Page 3. The original bill provided that you would receive an application "when the applicant has fenced the land designated in the application". This was changed to require that you fence first before you can obtain a license. This should be changed back to the old language.

4. Section 4(3). Page 3. Line 22. This was re-written. The task force proposal provided that "the department shall notify the applicant of its decision to approve the applications subject to the required fencing being completed". The change allows the Department to approve or deny the application and if required fencing has not been completed the department may only approve the application subject to completion of fencing. This changed the intent and the task force language should be re-instated.

5. Section 5. Page 4, Line 6. Once again, the draftsman gave discretion as to whether a license would be issued and changed "will" to "may". "Will" should be re-inserted.

6. Section 5(3). Page 4, Line 16. This is a typographical error and a misnomer on behalf of the bill draftsman. Line 16 should read as the old language appeared in our task force bill referring to "game animals" rather than "game farm animals". It should read: ". . . the department shall decide the approximate number of game animals of the species desired to be raised thereon (referred to herein as the 'base number')".

7. Section 7. Page 5, Line 22. This as revised does not provide for an automatic renewal of the license. By inserting the additional language it now allows the license to not be renewed if there has been any violation of the Act. To cover any violations we put in a specific revocation provision to take care of them. What we, as game farmers, are interest in is that we would have an opportunity to correct any alleged violation prior to the time that any license would be forfeited. By changing the language in the manner that they did, the department would be able to sit back and not renew your license by alleging a violation. Line 22, page 5 should read as the task force bill did, as follows: "The Department shall renew the license upon payment of the renewal fee if the licensee has not violated any of the provisions under which it was granted."

8. Section 8(2), Page 6. Line 6. Which provides for inspection. Our proposed draft provided that additional inspections would occur should it be deemed necessary. "Should it be deemed necessary" was replaced by "as it considers necessary." There is a difference in the intent, the latter being that the department has the sole discretion as to whether it will make unreasonable inspections of the property as opposed to where the department must show that there is some reason to make additional inspections. The old language should be reinstated.

9. Section 10(1), Page 6, Line 20. Item no. 1 of section 10 was added. It provides that no person may sell, dispose of or transport a living game farm animal except as provided in this section. I think that is overly broad and should be stricken. What we were attempting to deal with was the transportation in commerce of game farm animals. I may transport a game farm animal on my property, or between two properties owned by me and not have to comply with the Act. Item No. 1 should be deleted.

10. Section 10(2). Page 6, Line 25. Rather than say "attach" the bill of sale or invoice to the game farm animal, I think it should read that the bill of sale or invoice will "accompany" the game farm animal.

11. Section 10(3), Page 7, Line 8. New language has been added that requires a copy of the bill of sale or invoice to be sent to the department within 24 hours of disposition. I think this is unreasonable. The old section merely provided that a copy of the invoice or bill of sale would be delivered to the Department of Livestock and the Department of Fish, Wildlife & Parks. This is adequate. It may be impossible for some people to, within 24 hours, mail to the department. I am particularly thinking of individuals who live way out in the country and someone picks up an animal from their farm. They may not have access to a post office and may not be able to get something in the mail within 24 hours. I think this is an overly technical area which should be deleted.

11. Section 11. Page 7, Line 13. No. 1 of that section is new and should be deleted for the same reason mentioned above. There are adequate provisions made in the balance of the section with regard to sale of game farm parts, meats or by-products.

12. Section 12(1)(c), Page 8, Line 12. This should be deleted. We may not have permanent numbers on all game farm animals and when identified the identification may change. This serves no useful purpose and was added and should be deleted.

13. Section 13. Page 8. Here again, I think the intent of the section on unlawful capture has been changed. The idea was that no person may capture any state owned game animal to be used on a game farm. The draftsman added "or otherwise acquire any game animal in this state for use on a game farm". This could technically be read to prohibit me purchasing animals that Henry Stip might own. That is not the intent and I think we should insert after "game animal" on Line 20 "from the wild", as we had in our original draft proposal.

14. Section 14, Page 8, Line 23. Defining game animal, it should be "game farm animal" rather than "game animal".

15. Section 15, Page 9. On taxation, rather than state that the animals "must" be taxed, state "may" be taxed. I think taxation should be the same as on other livestock and if livestock are taxed so will game farm animals. But there may be no required tax on other livestock or on certain game farm animals such as bear.

16. Section 17, Page 9. I think this is too broad. We set forth certain areas where rule making was allowed. Rule making need not occur in any other areas. I think it should go back to the original definition of rule making and further provide that the rules are for the enforcement of those regulations not the implementation of them. This could mean that no action could be taken until some rules were adopted. This section should be changed back to the original language.

17. Section 19, Page 10. Grandfather clause. This was re-written and called "Current licenses valid." I think the old section should be reinstated in its entirety and this one should be deleted. The old section provided that "All licensed game farm operators shall be entitled to receive a game farm license from the department for the operation of their game farms at such time as this Act becomes effective." This is far different than saying that they "may" receive a game farm license in the manner provided by sections 1 through 18. This could require that they submit a new application in order to obtain a license. That was not our intent. We need the grandfather clause.

18. Identification. Identification was addressed in the original task force bill and has been deleted. I think it should be re-inserted. We had a separate clause entitled "Identification" which provided as follows: "Upon the purchase, sale or transfer of any game farm animal, the licensee must identify those animals removed." This should be added as a new section, say section 21.

19. Turning now to the game bird bill, I have similar objections to it that I had in the game farm bill. Those primarily revolve around Section 3(2), saying that a license "may" be issued rather than "shall" be issued, and implying that they must also previously fence the enclosure. This should be changed exactly as the game farm bill was to put it back as the task force had recommended for game farms, fur farms and bird farms.

20. Section 25. Pages 12 and 13. The same language was changed on the renewal of the license as was changed in the game farm bill, and it should be changed to read as it was in the draft from the task force. Once again, individuals want to have notice of any alleged violations and opportunity to correct them and not allow the department to sit back and deny a license by saying that there is a violation.

21. Section 32. Rulemaking. The same comments I had on the game farm bill apply to this one.

22. Section 34. Field trials. I note that they left out the definition of "bird field", "receiver field trial", and "pointer-setter field trial". I don't know whether this means anything but it was deleted from the Act.

23. The fur farm bill - The same requirements and changes with regard to obtaining a license subject to fencing and renewal of license and rulemaking apply as apply to the game farm bill and game bird bill.

24. Section 50. Page 21. I believe the last line of the bill should read ". . apply to sections 1 through 19 and 20 through 48" rather than "1 through 18 and 20 through 48. . . ".

Unless all of these changes are made, I will have no choice but to oppose the proposed legislation. I think that there has been a substantial modification of the intent of the task force bill. I understand how this could have occurred when I found out that it was Woody Roberts who re-wrote the bill. Woody used to be the attorney for the Fish and Game Department during the time we were having all of the controversy on the Big Horn Game Ranch.

I would like to have a copy sent to me of any revisions that are made in the bill. I want to be sure that it represents what the task force agreed upon and does not take away any rights that we negotiated. I would also like to be advised of the time when any hearings on the bill come forward before the Senate or the House.

Thank you for your patience in wading through these changes.

Yours very truly,

Ward Swanser

WS:am

cc: Task Force Members
All Montana Game Farm Operators

Exhibit 4
February 19, 1983

Amendments to SB 336

1. Title, line 6 through line 7.
Following: "FOR"
Insert: "INCREASED"
Following: "PENALTIES"
Strike: remainder of line 6 through "PROPERTY" on line 7

2. Title, line 8.
Strike: "THROUGH"
Insert: ","
Following: "81-7-503"
Strike: "AND"
Insert: ","
Following: "81-7-505,"
Insert: "AND 81-7-511,"

3. Page 2, line 1.
Strike: section 2 in its entirety
Renumber: subsequent sections

4. Page 3, line 13.
Strike: "within his own aircraft and"

5. Page 3.
Following: line 19
Insert: "Section 4. Section 81-7-511, MCA, is amended to read:

"81-7-511. Penalties - jurisdiction - revocation of permit. (1) Any person violating any provision of this part who is permitted to engage in aerial hunting pursuant to this part is guilty of a misdemeanor.

(2) A conviction for a violation of subsection (1) is punishable by a fine of not ~~more~~ less than $500.

(3) Any person who is not permitted to engage in aerial hunting pursuant to this part who violates any provisions of this part is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $250 or more than ~~$1,000~~ $1,500. A subsequent conviction under this subsection is punishable by a fine of not less than $500 or more than ~~$1,000~~ $1,500.

(4) The justice court has jurisdiction over violations of this part.

(5) The department may revoke or suspend the permit of anyone violating its terms."

6. Page 3, line 25 through line 2 on page 4.
Following: "livestock." on line 25
Strike: "flying" on line 25 through line 2, page 4

7. Page 3, line 3.
Strike: section 6 in its entirety
Renumber: subsequent section

8. Page 3, line 22.
Strike: "Sections"
Insert: "Section"
Strike: "and 6 are"
Insert: "is"

9. Page 3, line 24.
Strike: "sections 5 and 6"
Insert: "section 5"

STANDING COMMITTEE REPORT

February 19, 19 83

MR. PRESIDENT

We, your committee on FISH AND GAME

having had under consideration SENATE Bill No. 336

Respectfully report as follows: That SENATE Bill No. 336

introduced bill, be amended as follows:

1. Title, line 6 through line 7.
Following: "FOR"
Insert: "INCREASED"
Following: "PENALTIES"
Strike: remainder of line 6 through "PROPERTY" on line 7

2. Title, line 8.
Strike: "THROUGH"
Insert: ","
Following: "81-1-503"
Strike: "AND"
Insert: ","
Following: "81-7-505,"
Insert: "AND 81-7-511,"

3. Page 2, line 1.
Strike: section 2 in its entirety
Renumber: subsequent sections

RO/ASX

(cont.)

Chairman.

STATE PUB. CO.
Helena, Mont.

February 19, 19 83

4. Page 3, line 13.
Strike: "within his own aircraft and"

5. Page 3.
Following: line 19
Insert: "Section 4. Section 81-7-511, MCA, is amended to read:

"81-7-511. Penalties - jurisdiction - revocation of permit. (1) Any person violating any provision of this part who is permitted to engage in aerial hunting pursuant to this part is guilty of a misdemeanor.

(2) A conviction for a violation of subsection (1) is punishable by a fine of not more less than $500.

(3) Any person who is not permitted to engage in aerial hunting pursuant to this part who violates any provisions of this part is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $250 or more than ~~$1,000~~ $1,500. A subsequent conviction under this subsection is punishable by a fine of not less than $500 or more than ~~$1,000~~ $1,500.

(4) The justice court has jurisdiction over violations of this part.

(5) The department may revoke or suspend the permit of anyone violating its terms."

6. Page 3, line 25 through line 2 on page 4.
Following: "livestock." on line 25
Strike: "flying" on line 25 through line 2, page 4

7. Page 4, line 3.
Strike: section 6 in its entirety
Renumber: subsequent section

8. Page 4, line 22.
Strike: "Sections"
Insert: "Section"
Strike: "and 6 are"
Insert: "is"

9. Page 4, line 24.
Strike: "Sections 5 and 6"
Insert: "section 5"

And, as so amended
DO PASS

ED B. SMITH, Chairman.

STATE PUB. CO.
Helena, Mont.

STATUS SHEET

FISH AND GAME COMMITTEE

48 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 224	TO DESIGNATE THE GRIZZLY BEAR, URSUS ARCTOS HORRIBILIS, AS THE OFFICIAL ANIMAL OF THE STATE OF MONTANA.	2-28	TVEIT	3-10	BE CONCURRED IN	3-10
SB 336	REVISING THE AERIAL HUNTING LAWS	2-28	DANIELS	3-8	BE CONCURRED IN AS AMENDED	3-10
387	TO AUTHORIZE CATCHING WHITEFISH FROM THE KOOTENAI RIVER BY NETS AND TRAPS FOR PURPOSES OF SALE	2-28	MOHAR	3-15	BE CONCURRED IN	3-15
448	TO REGULATE GAME ANIMAL FARMS, GAME BIRD FARMS, AND FUR FARMS	2-28	LANE	3-15	BE CONCURRED IN AS AMENDED	3-17
HB 891	REQUIRE SAMPLING AND TESTING OF FISH FROM MONTANA WATERS FOR EXISTENCE OF SUBSTANCES TOXIC TO HUMAN HEALTH; PROVIDING AN APPROPRIATION; AND ~~PROVIDING AN EFFECTIVE DATE.~~	2-22	HARPER	3-1	TABLE	3-10

Form CS-32
1-79

Rep. Daily asked Senator Smith how he would feel about an amendment separating those two areas. The response was if this is a person's private property, I think we should take into consideration of the rights of those private property owners, and the management of game on that property.

Rep. Spaeth asked Senator Smith what the problem is with complying with the present federal law. The response was the nuisance of it is the main problem. The other problem is the fact that it is my property, and I feed the game. The outfitters and guides are getting a monopoly in this area, and they want to maintain it. If it wasn't for that, I don't think we would have a problem at all.

Rep. Ellison stated maybe we should treat these two areas separately.

Rep. Jensen asked Mr. Harmon if he now or every has advertised. The response was the first hunters came to my place by word of mouth.

Chairman Nilson closed the hearing on Senate Bill 126, at 1:35 p.m.

SENATE BILL 336

SENATOR M.K. DANIELS, District 14, Deer Lodge, opened by stating this bill relates to aerial hunting. Senator Daniels proposed an amendment on page 3, line 24, to strike the words "is guilty of a misdemeanor", and inserting the language, "will have such permit revoked". This is to make sure the permit is revoked, and to eliminate the language referring to it as a misdemeanor. The bill follows the Federal Aerial Hunting Act, and is felt necessary because of the fact that the feds only have two people in the state to enforce this law, whereas the Department of Livestock has indicated their willingness and interest in enforcing the law. The language strickened, was amended in the Senate by reason that the Department of Livestock indicated they already took those things into consideration in making their decisions. Basically, the bill requires some penalty increases in order to conform with the federal law.

PROPONENTS

JANET MOORE, Montana Trappers Association, said we are pleased with the way Senate Bill 336 has come through as amended. We have tried to get this law patterned more and more after the federal law. Ms. Moore distributed copies of the federal law for the information of the committee. (see exhibit 5) If we don't have our state law as strong as the federal law, it would weaken the federal law. Why are we so concerned about making it easy for the criminal? Two men have been killed in a heli-

copter accident. They were illegal aerial hunters. Six cases have been prosecuted in the last five years.

ROBERT HOWARD, Montana Trappers Association, said some of these aerial hunters are bringing in between $100,000., and $500,000. a year. We feel the penalty for this crime should fit the crime. It is a very difficult law to enforce, let alone get convictions on.

WILL BROOKE, Montana Woolgrowers, said we don't support illegal aerial hunting, but we do see aerial hunting by permit as a way of controlling game. I oppose the amendment because I feel it is already addressed on page 4, line 12.

LES GRAHAM, Montana Department of Livestock, said lines 3 to 9, page 4, show the suggested penalties that the department submitted in the Senate. This is one of the most difficult laws to enforce. You are not going to get them by working on the ground, and it is too costly to patrol the air. I am not sure if the law would allow a mandatory revocation of a permit or license, under the administrative codes. If the permit is to be revoked, something is going to have to be inserted in terms of length of time. Just because somebody is caught and suspended, doesn't necessarily mean it should be a lifetime suspension.

There were no opponents to Senate Bill 336.

Senator Smith closed by saying if the government confiscates a plane, they are responsible for that plane. If something happens to the plane, they would be liable. This is one reason the bill was changed.

Questions from committee. Chairman Nilson said if we change the word may to shall, on page 4, line 12, we could eliminate paragraph 3 in its entirety. Senator Smith replied that would be an appropriate amendment.

Rep. Swift asked Senator Daniels if he would be averse to raising the amount of the fine. The answer was as long as it is not less than $500., I would agree to whatever the committee feels is appropriate.

Chairman Nilson said is there any set amount where it changes from a misdemeanor to a felony? Dave Cogley, legal council, replied generally the cut off is $500.

Rep. Mueller said what will happen is that if it reaches the cut off, and comes under the jurisdiction of the district courts, it becomes more difficult because counties do not want to call district courts in to try these violations.

Rep. Ryan asked Ms. Moore if this bill will interfere in any way with the federal law. The response was it will weaken the federal law if we keep the present state law.

Rep. Jensen asked Mr. Howard if he would have any objection to confiscation as a minimum penalty. Mr. Howard said that he would rather see the penalty up high enough so it would be a deterent to these people.

Chairman Nilson closed the hearing at 2:05 p.m.

Chairman Nilson adjourned the meeting at 2:05 P.m.

Les Nilson

LES NILSON, Chairman

Cheryl Fredrickson

Cheryl Fredrickson, secretary

SENATE BILL 336

Rep. Jensen said there was strong interest from the proponents to this bill, to instruct the court that one consideration ought to be impoundment of the air craft as a penalty. This would be subsequent to conviction.

Rep. Devlin said I believe the federal statutes already cover this area. I don't think we should infringe on this when they are already taking care of it.

Rep. Ream moved the amendments to Senate Bill 336. (see exhibit 4)

Rep. Jenson said I have problems with minimum mandatory sentencing in general. We are giving the Justice of the Peace Courts the instruction to say that in this case, $500. is the minimum amount they may invoke as a penalty. We have to remember we have judges for a reason. I don't think this is fair.

Rep. Swift said I want it stated as a minimum so that they will know what they are facing.

Rep. Jensen commented we are giving more discretion to prosecutors and less to judges.

Rep. Spaeth made a substitute motion to restate the amendment to read not less than $500., nor more than $1,000. This only changes it to a cap of $1,000. The motion carried 16 to 1, with Representative Jensen voting no.

Rep. Spaeth moved Senate Bill 336, BE CONCURRED IN as amended, the motion carried 16 to 1, with Representative Jensen voting no.

HOUSE BILL 891

Chairman Nilson asked what the feeling of the committee would be if the bill were to be amended to be funded from the license fees rather than the general fund budget.

Rep. Mueller said when the Health Deaprtment gets a red hot situation, and they are checking the water because of a particular problem, part of the process is to check the fish tissue. They do this if they have a crucial situation, and I don't think this is the time to be expanding programs.

Rep. Swift said I am concerned that the department already has the authority to form these tests and take the samples. They have the procedures and mechanisms already. I think we ought to leave it the way it is without expanding this program and cluttering it up with the license fee programs.

Exhibit 4

AMENDMENTS TO SENATE BILL 336

1. Page 3, line 2.
Strike: "penalties--jurisdiction"
Insert: "Penalty"

2. Page 3, line 22 through page 4, line 25.
Strike: "(1)"
Strike: "violating"through "terms on page 4, line 13.
Insert: "convicted of violating a provision of this part is punishable by a fine of not less than $500 or more than $1,000. In addition, the permit, if any, of such person must be revoked for such period as the court may determine"

STANDING COMMITTEE REPORT

March 10, 19 83

MR. SPEAKER:

We, your committee on FISH AND GAME

having had under consideration SENATE Bill No. 336

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AERIAL HUNTING LAWS; INCLUDING A PROHIBITION ON HARASSMENT OF LIVESTOCK; PROVIDING FOR INCREASED PENALTIES FOR ILLEGAL HUNTING OF WILD ANIMALS; AMENDING SECTIONS 81-7-501, 81-7-503, 81-7-505, AND 81-7-511, MCA."

SENATE 336

Respectfully report as follows: That Bill No.
be amended as follows:

1. Page 3, line 2.
Strike: "Penalties--jurisdiction"
Insert: "Penalty"

2. Page 3, line 22 through page 4, line 25.
Strike: "(1)"
Strike: "violating" through "terms" on page 4, line 13.
Insert: "convicted of violating a provision of this part is punishable by a fine of not less than $500 or more than $1,000. In addition, the permit, if any, of such person must be revoked for such period as the court may determine"

AND AS AMENDED
BE CONCURRED IN

XXXXX
DO PASS

LES NILSON, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY